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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/034,995	01/03/2002	Scott Abram Musman		1115

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EXAMINER

HIRL, JOSEPH P

ART UNIT

PAPER NUMBER

2129

DATE MAILED: 02/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/034,995	MUSMAN, SCOTT ABRAM	
	<b>Examiner</b>	<b>Art Unit</b>	
	Joseph P. Hirl	2129	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 05 December 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)    | Paper No(s)/Mail Date. _____  |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                                    |

### **DETAILED ACTION**

1. This Office Action is in response to an AMENDMENT entered May 20, 2005 for the patent application 10/034,995 filed on January 3, 2002.
2. The First Office Action of March 4, 2005 is fully incorporated into this Final Office Action by reference.

### ***Status of Claims***

3. Claims 1-36 are pending in this application.

### ***Specification Objection***

4. Specification ends at page 29. Claims start on page 32 and end on page 39. Abstract is on page 40. It appears that pages 30 and 31 are missing. These pages were not provided with the answer to the First Office Action dated May 20, 2005.

This objection must be corrected.

### ***Double Patenting***

5. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis

added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

6. Claim 36 provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 45 of provisional Application No. 60/580,722. This is a provisional double patenting rejection since the conflicting claims have not in fact been patented.

7. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double

patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

8. Claims 17-24 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 22-24, 28-30 and 32-39 of provisional Application No. 60/580,722. Although the conflicting claims are not identical, they are not patentably distinct from each other because rewording of the claims failed to constitute a new invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 31-35 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 40-44 of provisional Application No. 60/580,722. Although the conflicting claims are not identical, they are not patentably distinct from each other because rewording of the claims failed to constitute a new invention.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 1-36 are rejected under 35 U.S.C. 102(b) as being anticipated by Douik et al (U.S. Patent 6,012,152, referred to as **Douik**).

***Claim 1***

Douik anticipates a plurality of interface agents running on the plurality of hosts, the plurality of interface agents assigned to resources within the computer network (**Douik**, para 11 below applies to all claims; Figs. 1, 2; c 15, l 16-31); a plurality of distributed case-based reasoning agents running on the plurality of hosts, wherein the plurality of distributed case-based reasoning agents is capable of accessing one or more case bases (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-40); and a plurality of response agents running on the plurality of hosts (**Douik**, Figs. 1, 2; c 15, l 41-54), wherein an interface agent in the plurality interface agents sends an input regarding an event in an assigned resource to an appropriate distributed case-based reasoning agent. among the plurality of distributed case-based reasoning agents (**Douik**, Figs. 1, 2; c 15, l 16-31), wherein the appropriate distributed case-based reasoning agent, upon receiving the input, accesses the one or more case bases to select a response and communicates the response to an appropriate response agent in the plurality of response agents (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-

40), and wherein the appropriate response agent implements the response to resolve the event (**Douik**, Figs. 1, 2; c 15, l 41-54).

***Claim 2***

Douik anticipates the resources in the computer network includes network management tools, network security tools, operating system specific features, and health tools (**Douik**, c 3, l 4-9; c 9, l 14-40; Examiner's Note (EN): health tools are fault management tools).

***Claim 3***

Douik anticipates the plurality of distributed case-based reasoning agents consider inputs regarding multiple resources sent by one or more of the plurality of interface agents (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-40).

***Claim 4***

Douik anticipates the response includes invoking one or more cases in the one or more case bases (**Douik**, c 7, l 34-43).

***Claim 5***

Douik anticipates the plurality of distributed case-based reasoning agents is capable of selecting a response when multiple cases in the one or more case bases match the input (**Douik**, c 7, l 29-54; c 11, l 38-53; c 15, l 32-40; c 26, l 30-37; EN: model-based reasoning incorporates the plurality of case-based reasoning facilitating the matching with input).

***Claim 6***

Douik anticipates the plurality of distributed case-based reasoning agents uses a precedence order to select a response (**Douik**, c 16, l 9-15; EN: precedence is order or hierarchy).

***Claims 7, 27***

Douik anticipates the precedence order is defined based on specificity and priority values (**Douik**, c 16, l 9-15; EN: such is reasoning, testing and knowledge maintenance).

***Claims 8, 28***

Douik anticipates the plurality of distributed case-based reasoning agents uses response function call-switches to select a response (**Douik**, c 26, l 7-29; c 30, l 20-30; c 36, l 42-46; EN: such is the process of repairing a phone system).

***Claims 9, 29***

Douik anticipates the response function call-switches include active, always-fire, call-next, and timeout switches (**Douik**, c 26, l 7-29; c 30, l 20-30; c 36, l 42-46; EN: such is the process of repairing a phone system; EN: telephone switchers are on or off - active or timeout, always on and queued relate to always-fire and call-next).

***Claims 10, 30***

Douik anticipates the plurality of distributed case-based reasoning agents uses a precedence order and response function call-switches to select the response (**Douik**, c 26, l 7-29; c 30, l 20-30; c 36, l 42-46; EN: such is the process of repairing a phone system to include the related hierarchy or precedence).



**Claim 11**

Douik anticipates the response includes invoking one or more cases in the one or more case bases (**Douik**, c 7, l 29-54; c 11, l 38-53; c 15, l 32-40; c 26, l 30-37; EN: model-based reasoning incorporates the plurality of case-based reasoning representing one or more cases).

**Claim 12**

Douik anticipates the plurality of cases includes case templates (**Douik**, c 17, l 6-51; EN: models are templates).

**Claim 13**

Douik anticipates the case templates are used to represent an event, add a new case, or analyze historical events (**Douik**, c 17, l 6-51; EN: such is models).

**Claim 14**

Douik anticipates agents including the plurality of interface agents, the plurality of distributed case-based reasoning agents, and the plurality of response agents are independent (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-40).

**Claim 15**

Douik anticipates cases in the one or more case bases are Adaptable (**Douik**, c 27, l 43-52).

**Claims 16, 18, 33**

Douik anticipates a failing agent is replaced by another Agent (**Douik**, c 3, l 48-57).

**Claims 17, 31, 36**

Douik anticipates monitoring a resource in the computer network using an interface agent (**Douik**, Figs. 1, 2; c 15, l 16-31); reporting, using the interface agent, an event in the resource to an appropriate distributed case-based reasoning agent (**Douik**, Figs. 1, 2; c 15, l 16-31); selecting a response using the appropriate distributed case-based reasoning agent (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-40); and implementing the response using an appropriate response agent (**Douik**, Figs. 1, 2; c 15, l 41-54), wherein the appropriate distributed case-based reasoning agent accesses one or more case bases in the selecting step (**Douik**, Figs. 1, 2; c 6, 32-39; c 7, l 29-33; c 15, l 32-40; EN: computer systems have computer readable mediums – **Douik**, 1, 26-36).

**Claims 19, 34**

Douik anticipates dynamically updating the one or more case bases.  
(**Douik**, c 24, l 64-67 ; c 25, l 1-11).

**Claim 20**

Douik anticipates the updating step uses a plurality of case templates (**Douik**, c 17, l 6-51).

**Claim 21**

Douik anticipates an event using a case template, wherein the case template may be updated (**Douik**, c 17, l 6-65).

***Claim 22***

Douik anticipates adding a new case to the one or more case bases using a case template (**Douik**, c 18, l 34-50; c 26, l 30-37; EN: SFM contains the case-based reasoning and agents).

***Claim 23***

Douik anticipates analyzing historical data using a case template (**Douik**, c 26, l 30-37).

***Claim 24***

Douik anticipates the analyzing step may be used in the selecting step (**Douik**, Fig. 2).

***Claims 25, 35***

Douik anticipates resolving a conflict when multiple cases match the event (**Douik**, c 26, l 7-29; EN: fault is synonymous with multiple case conflict).

***Claim 26***

Douik anticipates the resolving step uses a precedence order (**Douik**, c 26, l 7-29; EN: hierarchical order establishes precedence).

***Claim 32***

Douik anticipates surviving a failure without service interruption (**Douik**, c 29, l 48-60).

***Response to Arguments***

12. The statutory double patenting provisional rejection to claims 1-36 under 35 U.S.C. 101 is withdrawn.
13. Applicant's arguments filed on May 20, 2005 related to Claims 1-36 have been fully considered but are not persuasive.

**In reference to Applicant's argument:**

Claim 36 stands provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claim 45 of Provisional Application No. 60/580,722. Applicant respectfully traverses this rejection. Applicant notes that double patenting rejections can only be properly made over non-provisional applications. As such, Applicant respectfully requests withdrawal of this rejection. If the provisional application becomes a non-provisional application, the issue raised will be addressed.

Claims 17-24 stand provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 22-24, 28-30 and 32-39 of Provisional Application No. 60/580,722. Applicant respectfully traverses this rejection. Applicant notes that double patenting rejections can only be properly made over non-provisional applications. As such, Applicant respectfully requests withdrawal of these rejections. If the provisional application becomes a non-provisional application, the issue raised will be addressed.

Claims 31 -35 stand provisionally rejected under 35 U.S.C. 101 as claiming the same invention as that of claims 40-44, respectively, of Provisional Application No. 60/580,722. Applicant respectfully traverses this rejection. Applicant notes that double patenting rejections can only be properly made over non-provisional applications. As such, Applicant respectfully requests withdrawal of these rejections. If the provisional application becomes a non-provisional application, the issue raised will be addressed.

**Examiner's response:**

Applicant is directed to MPEP804 I.B. which references two co-pending applications filed by the same inventive entity. The double patenting rejections remain.

**In reference to Applicant's argument:**

Independent claim 1 recites, inter alia, "a plurality of interface agents running on the plurality of hosts." Independent claim 17 recites, inter alia, "monitoring a resource in the computer network using an interface agent." Independent claim 31 recites, inter alia, "means for monitoring a resource in the computer network using an interface agent," while independent claim 36 recites, inter alia, "computer readable program code configured to monitor a resource in the computer network using an interface agent." The interface agents of the present invention are components that allow system events to be monitored, captured, translated into a standard format (a pre-negotiated case structure) for use by the system and transported to a reasoning agent that can reason about the event. (See specification paragraphs (0052)-(0061)). In contrast, the interface agents disclosed by Douik et al. are part

of a GUI system for interaction between humans and the software and hardware. (col. 27, line 63 - col. 28, line 5). They do not perform the functions of the interface agents of the claimed invention. Furthermore, Douik et al. do not disclose any agent that performs the function of the interface agents of the claimed invention.

Examiner's response:

Para 17 below applies. Limitations appearing in the specification but not recited in the claim are not read into the claim. Each limitation of the claims has been appropriately addressed in the First Office Action dated March 4, 2005. Indeed each Douik agent monitors, captures and translates into a common format ... this is what agents do ... a software function (Douik, c 11, l 1-15). The Correlation Agent of Fig. 2 is an interface agent.

### ***Examination Considerations***

14. The claims and only the claims form the metes and bounds of the invention. "Office personnel are to give the claims their broadest reasonable interpretation in light of the supporting disclosure. *In re Morris*, 127 F.3d 1048, 1054-55, 44USPQ2d 1023, 1027-28 (Fed. Cir. 1997). Limitations appearing in the specification but not recited in the claim are not read into the claim. *In re Prater*, 415 F.2d, 1393, 1404-05, 162 USPQ 541, 550-551 (CCPA 1969)" (MPEP p 2100-8, c 2, l 45-48; p 2100-9, c 1, l 1-4). The Examiner has full latitude to interpret each claim in the broadest reasonable sense. Examiner will reference prior art using terminology familiar to one of ordinary skill in the art. Such an approach is broad in concept and can be either explicit or implicit in meaning.

15. Examiner's Notes are provided to assist the applicant to better understand the nature of the prior art, application of such prior art and, as appropriate, to further indicate other prior art that maybe applied in other office actions. Such comments are entirely consistent with the intent and spirit of compact prosecution. However, and unless otherwise stated, the Examiner's Notes are not prior art but a link to prior art that one of ordinary skill in the art would find inherently appropriate.

16. Unless otherwise annotated, Examiner's statements are to be interpreted in reference to that of one of ordinary skill in the art. Statements made in reference to the condition of the disclosure constitute, on the face of it, the basis and such would be obvious to one of ordinary skill in the art, establishing thereby an inherent prima facie statement.

17. Examiner's Opinion: Paras 14-17 apply. The Examiner has full latitude to interpret each claim in the broadest reasonable sense.

### ***Conclusion***

18. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

19. Claims 1-36 are rejected.

#### ***Correspondence Information***

Any inquiry concerning this information or related to the subject disclosure should be directed to the Examiner, Joseph P. Hirl, whose telephone number is (571) 272-3685. The Examiner can be reached on Monday – Thursday from 6:00 a.m. to 4:30 p.m.

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Anthony Knight can be reached at (571) 272-3687.

Any response to this office action should be mailed to:

Commissioner of Patents and Trademarks,

Washington, D. C. 20231;

or faxed to:

(571) 273-8300 (for formal communications intended for entry.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have any questions on access to Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll free).

A handwritten signature in black ink, appearing to read "J. P. Hirl", followed by the initials "P. E." to its right.

Joseph P. Hirl  
Primary Examiner

July 19, 2005